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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/854,919

05/15/2001

Karl-Heinz Baumann

225/49907

7559

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06/03/2004

CROWELL & MORING LLP
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EXAMINER

DUONG, THO V

ART UNIT

PAPER NUMBER

3743

DATE MAILED: 06/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/854,919

Applicant(s)

BAUMANN ET AL.

Examiner

Tho v Duong

Art Unit

3743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>1/28/2004</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

A receipt of applicant's amendment filed 1/28/2004 is acknowledged. Claims 1-19 are now pending.

The indicated allowability of claims 6,8,12,14 and 18 are withdrawn in view of the newly interpretation of the claim. The claims must be interpreted as broadly as their terms reasonably allow. Any inconvenient is respectfully regretted.

Response to Arguments

Applicant's arguments filed 1/28/2004 have been fully considered but they are not persuasive (See the rejection). All the claimed subject matter has been rejected as follows:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,4-6,10,11 and 13-19 are rejected under 35 U.S.C. 102(b) as being anticipated by E. G. Zeeb (US 2,715,448). Zeeb discloses (figures 1-5) a heat exchanger assembly on a front carrying structure (20,22,26,58) of a motor vehicle comprising a front wall (58) having a middle cut out region of a passage orifice (68) for a cooling-air flow extending in a transverse plane; a radiator (56) approximately overlapping the passage orifice (68); the front wall region (58) of the front carrying structure having at least two mutually facing side wall regions (60,62,64,68)

Art Unit: 3743

delimiting the passage orifice (68); and wherein the heat exchanger module (56) has two mutually opposite end regions (122) projecting beyond the passage orifice (68) and operatively connected to the front wall (58) through guides (102) that engage around respectively the end regions (122) of the heat exchange module; and the front wall (58) having further assemblies (44,48) mounted on and arranged in front of the front wall by bolts (74). As regarding claims 1,13 and 15, it has been held that the recitation that an element is “adapted to” perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. In re Hutchison, 69, USPQ 138. Furthermore, Zeeb discloses (figure 4) that the heat exchanger module (56) and the front wall (58) are connected together by welding and fasteners (124,126,128) and placed on the front end of the car. Therefore, in a head-on collision, it is inherently that, both the front wall and the heat exchanger module (56) belong to a deformable zone of the car and they both absorb impact energy and reinforcingly co-operate with each other since they are connected together. As regarding claim 5, the front wall (58) is made out of sheet metal. Therefore it is considered to be a light-weight wall. The method of forming the device “an extruded profile” is not germane to the issue of patentability of the device itself. Therefore, this limitation has not been given no significant patentable weight since claim 5 is an apparatus claim and that the front wall (58) is similar to the claimed front wall. “Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process.” In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985).

Art Unit: 3743

MPEP 2114. As regarding claims 6 and 18, Zeeb further discloses (figures 2 and 4) that the two mutually opposite end regions (122) of the heat exchange module (56) are fastened to the guides (102) of the carrying structure approximately over an entire longitudinal extent of the end regions. (the whole height and width of the end regions (122) are fasten to the guides). As regarding claim 12, it has been held that the recitation that an element is “capable of” performing a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. In re Hutchison, 69 USPQ 138. In this instant application, Zeeb discloses (figures 2 and 4) that the support member (100) having a pair of guides (102) in form of a groove, and the radiator (56) has the projecting ends (122) appears to be the same size with the depth of the groove. Therefore, the radiator (56) is instead of secured to the front wall (58) by attaching the projecting ends (122) on a side of the groove of parallel legs (102), the radiator has an ability of being pushed in a manner of a drawer with projecting ends (122) into the groove as a sliding guide of the wall region and being secured in a pushed-in position via fixing elements (126) and wherein the projecting ends (122) and guides (102) is a tongue and groove arrangement. As regarding claim 14, the method of forming the device “by sliding the two mutually opposite end regions into associated sliding guides of the front wall” is not germane to the issue of patentability of the device itself. “Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process.” In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985). In this instant application, the

Art Unit: 3743

mounting structure between the end regions (122) and the guides (102) is the same or obvious from the mounting structure of the product in the product-by-process claim, which structurally has the end regions in associated with the guides and is secured with fixing device. As regarding claims 17 and 19, since the heat exchanger assembly of Zeeb is the same with the claimed heat exchanger assembly, it is believed that the method of making the heat exchanger assembly is similar to the claimed method of making the claimed heat exchanger assembly. Specifically, Zeeb discloses (figure 2 and 4) that the opposite end regions of (122) is pushed (bring into the assembly) so that the opposite end regions (122) is located between the guides (102) (not in the groove of the guide but between the left and right guide) in order to attach the heat exchange module to the front carrying structure around the opposite end regions.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-3, 7-9 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zeeb in view of Ikeda et al. (US 5,271,473). Zeeb substantially discloses all of applicant's claimed invention as discussed above except for the limitation that heat exchanger module is arranged in front of the passage orifice and a further heat exchange module is arranged in a region of overlap with the heat exchange module. Zeeb further discloses (figures 1,2 and 5) that the front wall region (58) of the front carrying structure having at least two mutually facing side wall regions

Art Unit: 3743

(60,62,64,68) delimiting the passage orifice (68); and wherein the radiator (56) has two mutually opposite end regions (122) and upper, lower headers (118,130) projecting beyond the passage orifice (68). It is considered that the opposite end regions (122) and upper and lower headers (118,130) overlap at least partially the wall regions (58) since these end regions and the headers project beyond the passage orifice (68), which is delimited by the wall regions. As regarding the limitations of “the heat exchange module is arranged in front of the passage orifice” and “a further heat exchange module”, it is well known in the automobile art that an assembly of a radiator and condenser is positioned in front of the engine compartment. Attention is now directed to Ikeda. Ikeda discloses (figure 2 and column 1, lines 12-52 and column 3, line 60-column 4, line 2) a heat exchanger module assembly that has an assembly of a radiator (17), which is to cool engine coolant and a condenser (18), which is provided for air conditioning system, positioned in front of a passage orifice, which is formed within a front wall regions (15) of the carrying structure, to allow an easy access to the heat exchanger assembly when it is time to replace or to repair the heat exchange assembly. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use Ikeda’s teaching in Zeeb’s heat exchanger assembly arranged on the front carrying structure of a motor vehicle to allow an easy access to the heat exchanger assembly when it is time to replace or to repair the heat exchanger assembly and to equip the vehicle with an air conditioning system. As regarding claim 7, it has been held that the recitation that an element is “capable of” performing a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. In re Hutchison, 69 USPQ 138. Zeeb discloses (figures 2 and 4) that the support member (100) having a pair of legs (102) in form of a groove, and the radiator (56) has

Art Unit: 3743

the projecting ends (122) appears to be the same size with the depth of the groove. Therefore, the radiator (56) is instead of secured to the front wall (58) by attaching the projecting ends (122) on a side of the groove of parallel legs (102), the radiator is capable of (emphasis added) of being pushed in a manner of a drawer with projecting ends (122) into the groove as a sliding guide of the wall region and being secured in a pushed-in position via fixing elements (126). As regarding claim 8, Zeeb does not disclose that the guides (102) and the front wall (58) are produced in one part. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the guides (102) in one part with the front wall, since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. *Howard V. Detroit Stove Works*, 150 U. S. 164 (1893).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Nakai et al. (US 6,216,810) discloses a front end module structure of vehicle.

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Tho Duong whose telephone number is (703) 305-0768. The examiner can normally be reached on from 9:30-6 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennet, can be reached on (703) 308-0101. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

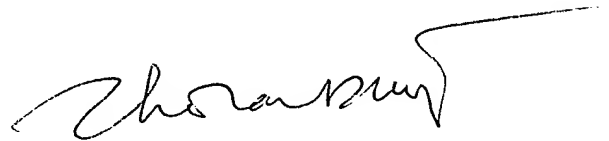
Art Unit: 3743

Any inquiry of a general nature or relating to status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0861.

A handwritten signature consisting of the letters 'T' and 'D' in a cursive, stylized font.

TD

May 30, 2004

A handwritten signature in cursive script, appearing to read 'Tho Duong', with a long horizontal flourish extending to the right.

Tho Duong

Patent Examiner.